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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

**BOARD OF TRUSTEES OF THE ALASKA
ELECTRICAL PENSION PLAN,**

Case No.

Plaintiff,
v.

**MARSHALL'S ELECTRIC, INC. and
DOES 1-25,**

COMPLAINT FOR COLLECTION OF
EMPLOYER WITHDRAWAL LIABILITY

Defendants.

For its complaint, Plaintiff alleges as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff is the Board of Trustees of the Alaska Electrical Pension Plan (“Trust”). The Trust is an “employee pension benefit plan” as defined by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), ERISA § 3(2), 29 U.S.C. § 1002(2); and a “multiemployer plan” as defined in ERISA § 4001(a)(3), 29 U.S.C. § 1301(a)(3). Plaintiff is the “plan sponsor” of the Trust, as defined in ERISA § 4001(a)(10), 29 U.S.C. § 1301(a)(10).

2. Defendant Marshall's Electric, Inc. (“Marshall's”) is an Alaska corporation engaged in business in the State of Alaska having its principal offices at 3621 East 66th Avenue, Anchorage, Alaska, 99507.

COMPLAINT– 1

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3. Marshall's is an "employer" as defined by ERISA § 3(5), 29 U.S.C. § 1002(5).

4. Does 1-25 are business entities yet to be identified that share common ownership and are in the same controlled group as Marshall's as defined by ERISA § 4001(b)(1), 29 U.S.C. §1301(b)(1).

5. This Court has jurisdiction over this action pursuant to ERISA § 4301(c), 29 U.S.C. § 1451(c).

6. Venue is properly laid in this Court pursuant to ERISA § 4301(d), 29 U.S.C. § 1451(d), because the Trust is administered within this judicial district.

II. FIRST CLAIM FOR RELIEF -
PAYMENT OF ASSESSED WITHDRAWAL LIABILITY PURSUANT TO ERISA
§4219(c)(5)(A)

7. The Trust re-alleges the facts set forth in paragraphs 1 through 6 as above as if stated fully herein and further allege as follows:

8. The "plan year" of the Trust for purposes of ERISA § 4205, 29 U.S.C. § 1385, begins January 1 and ends December 31.

9. Marshall's was obligated to make employer contributions to the Trust on behalf of certain of its employees under the terms of one or more collective bargaining agreements.

10. During the 2015 plan year, Marshall's permanently ceased to have an obligation to contribute to the Trust.

11. Following the permanent cessation of its contribution obligation, Marshall's continued to perform work in the jurisdiction of the collection bargaining agreement of the type for which contributions were previously required.

COMPLAINT– 2

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12. During the 2015 plan year, Marshall's had a complete withdrawal from the Trust for purposes of ERISA § 4203(b)(2), 29 U.S.C. § 1383(b)(2).

13. As a result of its complete withdrawal, the Trust determined that Marshall's owes \$63,310.00 in withdrawal liability to the Trust.

14. By letter dated May 4, 2016, the Trust notified Marshall's in writing of its withdrawal liability assessment and demanded payment in accordance with the installment schedule. The first monthly payment of \$27,338.67 was due June 1, 2016 and each subsequent payment is due quarterly until a total of three quarterly payments are made.

15. By letter dated June 8, 2016, the Trust notified Marshall's that its payment due on June 1, 2016 had not been received and that payment must be made within 60 days to avoid a default pursuant to ERISA § 4219(c)(5)(A), 29 U.S.C. §1399(c)(5)(A).

16. Sixty days have passed since the Trust's June 8, 2016 letter demanding payment of its June 1, 2016 installment payment. Marshall's failed to make the required payment and is in default pursuant to ERISA § 4219(c)(5)(A), 29 U.S.C. § 1399(c)(5)(A).

17. Pursuant to § 4219(c)(5)(A), 29 U.S.C. § 1399(c)(5)(A), Marshall's owes the Trust immediate payment of \$63,310.00 in withdrawal liability.

18. Under the terms of the Trust Agreement and ERISA §§ 4301(b), 515, and 502(g)(2), Marshall's is obligated to pay liquidated damages, interest, reasonable attorney's fees, and costs and expenses of suit to be determined upon motions at trial. 29 U.S.C. §§ 1451(b), 1145, and 1132(g)(2).

III. SECOND CLAIM FOR RELIEF – CONTROL GROUP LIABILITY

19. The Trust re-alleges the facts set forth in paragraphs 1 through 18 as above as if stated fully herein and further allege as follows:

COMPLAINT– 3

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20. Marshall's and Does 1-25 share common ownership and are in the same controlled group as defined by ERISA § 4001(b)(1), 29 U.S.C. §1301(b)(1).

21. Does 1-25 are jointly and severally liable for the withdrawal liability to the Trust because they are in the same control group as Marshall's as defined by ERISA § 4001(b)(1), 29 U.S.C. § 1301(b)(1).

22. Does 1-25 are jointly and severally liable for the payment of liquidated damages, interest, reasonable attorney's fees, and costs and expenses of suit, to be determined upon motions or at trial, as provided by the terms of the Trust Agreements and ERISA §§ 4301(b), 515, and 502(g)(2), 29 U.S.C. §§ 1451(b), 1145, and 1132(g)(2).

WHEREFORE, the Trust prays for judgment against the Defendants, jointly and severally, as follows:

- (a) Against the Defendants Marshall's Electric, Inc. and Does 1-25 for the full withdrawal liability in the amount of \$63,310.00, plus interest;
- (b) For liquidated damages, interest, attorney fees, and costs of expenses of suit; and
- (c) For such other and further relief as the Court deems just and equitable.

DATED THIS 6th day of September, 2016

/s/ Frank J. Morales
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COMPLAINT- 4

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Case 3:16-cv-00205-JWS Document 1 Filed 09/07/16 Page 4 of 4